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10-11-2006
(Date of signature and deposit)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants: Ian B. Bigham et al.

Group Art Unit Unknown

Serial No.: 10/538,814

Examiner: Unknown

International Application No. PCT/IB2003/006496

Filed: June 13, 2005

Attorney Docket No.: 1-24194

For: DEVICE FOR THE PRODUCTION OF COMB HONEY

DECLARATION UNDER 37 CFR 1.47(a) AND 37 CFR 1.47(b)
REGARDING FACTS PERTINENT TO REFUSAL
OF A JOINT INVENTOR TO SIGN A SUBSTITUTE DECLARATION

Mail Stop PCT

Commissioner for Patents, P.O. Box 1450
Alexandria, VA 22313-1450

Attention: Office of PCT Legal Administration

Sir:

I am Ted C. Gillespie, a patent lawyer registered with the U.S. Patent and Trademark Office, and I have been involved with the prosecution of the above-identified patent application.

The inventors are Andreas W. Sperlich, residing at 1709 Front road, RR#2, St. Williams, Ontario NOE 1PO, Canada, and Ian B. Bigham, 303 West ¼ line RR#2, St. Williams, Ontario NOE 1PO, Canada, both Canadian citizens. At the time of filing the National application in the U.S., the inventors both signed a Declaration (hereinafter, the executed Declaration), a copy of which is of record. Mr. Bigham signed on June 9, 2005 and Mr. Sperlich signed on June 10, 2005. This executed Declaration was filed with the above-identified application at the time of filing.

23 OCT 1
Legal Staff
International Division

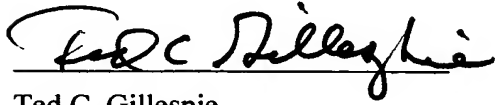
The executed Declaration is possibly defective since it does not include proper identification as to the Title of the application. Because of this defect, I tried to get the inventors to execute a new, corrected Declaration. In the meantime, Mr. Bigham has become disassociated with Bee-O-Sphere Technologies, the assignee of the patent application, and he now refuses cooperate with Bee-O-Sphere Technologies or with me, and, specifically, refuses to sign the corrected Declaration.

I have attempted to get Mr. Bigham to sign the substitute Declaration, but he has not responded to any telephone messages and has not responded to my email inquiries. In addition to my attempts to contact Mr. Bigham by phone calls and e-mail messages, I sent the Declaration, specification and drawings to Mr. Bigham on June 5, 2006 via DHL courier. The documents were actually delivered to Mr. Bigham, as evidenced by the attached DHL Invoice, International Shipment Waybill and Track Results Detail (4 pages total). The Track Results Detail shows that the documents that I sent to Mr. Bigham were actually delivered at 3:22 PM on June 7, 2006. DHL assured me that they always get a signature of the receiving party for every delivery. A copy of my cover letter, dated June 5, 2006, to Mr. Bigham is also attached. I note that my letter states that the letter was sent "Via Federal Express", but in fact I eventually decided to send the documents to Mr. Bigham via DHL courier instead.

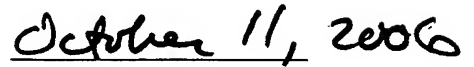
To date Mr. Bigham has made no response. In my opinion, Mr. Bigham's lack of action in responding to these inquiries and requests to sign the corrected Declaration constitutes factual proof that he has refused to execute the application.

I hereby declare that all statements made in this declaration of my own knowledge are true, and that all statements made on information or belief are believed to be true; and further, all these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both

under Section 1001 of title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application and any patent issued from the application.



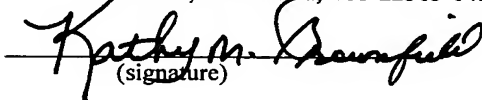
Ted C. Gillespie
Registration No. 27,981



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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants: Ian B. Bigham et al. Group Art Unit Unknown
Serial No.: 10/538,814 Examiner: Unknown
Filed: June 13, 2005 Attorney Docket No.: 1-24194
International Application No. PCT/IB2003/006496

For: DEVICE FOR THE PRODUCTION OF COMB HONEY

RENEWED PETITION UNDER 37 CFR 1.47(a) FOR
ACCEPTANCE OF DECLARATION UNDER CIRCUMSTANCES WHERE
ONE JOINT INVENTOR REFUSES TO SIGN A SUBSTITUTE DECLARATION

Mail Stop PCT
Commissioner for Patents, P.O. Box 1450
Alexandria, VA 22313-1450
Attention: Office of PCT Legal Administration

Honorable Sir:

This is a request for reconsideration of a petition to accept a substitute Declaration for the above-identified application. This petition is responsive to a Decision on Petition under 37 CFR 1.47(a) and 37 CFR 1.47(b), dated August 11, 2006, denying an original petition filed June 16, 2006. This petition is also responsive to the Notice of Missing Parts mailed February 14, 2006. The Decision on Petition stated that the original petition, a copy of which is attached, failed to satisfy all the requirements of 37 CFR 1.47(a). More specifically, the original petition failed to supply the last known address of the recalcitrant inventor, Ian Bigham, and also failed to provide adequate proof of refusal to sign by the inventor.

The last known address of the recalcitrant inventor is 303 West ¼ line RR#2, St. Williams, Ontario NOE 1PO, Canada. The proof of refusal of the inventor to sign the Declaration is provided by the attached Declaration by Ted C. Gillespie.

There should be no additional fee for this submission, but if there is a necessary additional fee required pertaining to this response, please charge it to Deposit Account No. 13-0005.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Ted C. Gillespie", is written over a horizontal line.

Ted C. Gillespie

Reg. No. 27,981

MacMillan, Sobanski & Todd, LLC
One Maritime Plaza, Fifth Floor
720 Water Street, Toledo, Ohio 43604
(419) 255-5900



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MACMILLAN SOBANSKI & TODD, LLC
ONE MARITIME PLAZA, FOURTH FLOOR
720 WATER STREET
TOLEDO, OHIO 43604-1619

In re Application of:
BIGHAM, Ian, B., et al.
U.S. Application No.: 10/538,814
PCT No.: PCT/IB2003/006496
International Filing Date: 12 December 2003
Priority Date: 13 December 2002
Attorney's Docket No.: 1-24194
For: DEVICE FOR THE PRODUCTION OF
COMB HONEY

DECISION ON PETITION UNDER
37 CFR 1.47(a)

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AUG 14 2006

MacMillan, Sobanski & Todd

This decision is issued in response to applicants' "Petition Under 37 CFR 1.47(a) and 37 CFR 1.47(b) For Acceptance Of Declaration Under Circumstances Where One Joint Inventor Refuses To Sign A Substitute Declaration" filed 16 June 2006, treated herein as a petition under 37 CFR 1.47(a).¹ Applicants have paid the required petition fee.

BACKGROUND

On 12 December 2003, applicants filed international application PCT/IB2003/006496. The international application claimed a priority date of 13 December 2002, and it designated the United States. On 01 July 2004, the International Bureau communicated a copy of the international application to the United States Patent And Trademark Office (USPTO). The deadline for submission of the basic national fee was thirty months from the priority date, i.e., 13 June 2005.

On 13 June 2005, applicants filed a Transmittal Letter for entry into the national stage in the United States accompanied by, among other materials, payment of the basic national fee and an executed declaration.

On 14 February 2006, the United States Designated/Elected Office (DO/EO/US) mailed a Notification Of Missing Requirement (Form PCT/DO/EO/905) indicating that an executed declaration in compliance with 37 CFR 1.497 and the surcharge for filing the declaration later than thirty months after the priority date were required. The Notification stated that the declaration filed 13 June 2005 was not acceptable because it was not legible and because it did not identify the specification to which it was directed.

¹ The petition references both 37 CFR 1.47(a) and 1.47(b); however, because one of the co-inventors has executed the declaration herein, the applicable regulation is 37 CFR 1.47(a).

COPY

On 16 June 2006, applicants filed a response to the Notification Of Missing Requirements (with required two month extension fee). The submission includes the required surcharge payment, a revised declaration executed by co-inventor Andreas SPERLICH, and the petition under 37 CFR 1.47(a) considered herein. The petition seeks acceptance of the application without the signature of co-inventor Ian B. BIGHAM, whom applicants assert has refused to execute the revised declaration.

DISCUSSION

1. The Declaration Filed 13 June 2005:

Initially, it must be determined if the declaration filed 13 June 2005 can be accepted under 37 CFR 1.497, because if this fully-executed declaration is acceptable, the petition under 37 CFR 1.47(a) is moot.

The Notification Of Missing Requirements stated that the declaration filed 13 June 2005 was defective for failure to properly identify the specification to which it was directed. In the present petition, applicants assert that a copy of the present specification accompanied the declaration filed 13 June 2005 when it was executed, evidencing the inventors' intent to execute the present application. Applicants also note that the declaration bears the docket number used on all other paper work filed with respect to the present national stage application.

MPEP § 602(VI) sets forth the minimum information required for a declaration to adequately identify the application to which it is directed:

The following combination of information supplied in an oath or declaration filed on the application filing date with a specification are acceptable as minimums for identifying a specification and compliance with any one of the items below will be accepted as complying with the identification requirement of 37 CFR 1.63:

(A) name of inventor(s), and reference to an attached specification which is both attached to the oath or declaration at the time of execution and submitted with the oath or declaration on filing;

(B) name of inventor(s), and attorney docket number which was on the specification as filed; or

(C) name of inventor(s), and title of the invention which was on the specification as filed.

The declaration filed 13 June 2005 does not satisfy any of these options. With respect to option (A), while the declaration does refer to an attached specification; no such specification was "submitted with the oath or declaration on filing," as required. With respect to option (B), a specification bearing the docket number set forth on the declaration was not filed with the

declaration, as required. Finally, with respect to option (C), the declaration does not bear the title of the invention.

Because the declaration filed 13 June 2005 does not satisfy the minimum requirements for identifying the application to which it was directed, as set forth in the MPEP, the declaration can not be accepted under 37 CFR 1.497. Consideration of the partially executed declaration filed 16 June 2006, and the accompanying petition under 37 CFR 1.47(a), is therefore required.

2. Petition Under 37 CFR 1.47(a):

A grantable petition under 37 CFR 1.47(a) must be accompanied by: (1) the fee under 37 CFR 1.17; (2) a statement of the last known address of the non-signing inventor; (3) an oath or declaration executed by the other inventors on behalf of themselves and the non-signing inventor; and (4) factual proof that the inventor refuses to execute the application or cannot be reached after diligent effort.

Applicants here have submitted the required petition fee. Item (1) is therefore satisfied.

The petition does not include an express statement of the last known address of the non-signing inventor. Item (2) is therefore not satisfied.

Regarding item (3), section 409.03(a) of the Manual of Patent Examining Practice (MPEP) states that:

An oath or declaration signed by all the available joint inventors with the signature block of the nonsigning inventor(s) left blank may be treated as having been signed by all the joint inventors on behalf of the nonsigning inventor(s), unless otherwise indicated.

Here, the petition includes a revised declaration that is legible, clearly identifies the application to which it is directed, is executed by co-inventor Andreas SPERLICH, and includes an unsigned signature block for the non-signing inventor. This declaration may be treated as having been executed by the signing inventor on his own behalf and on behalf of the non-signing inventor. Accordingly, item (3) is satisfied.

Regarding item (4), the present record is insufficient to support the conclusion that the inventor has refused to sign the revised declaration. Pursuant to MPEP section 409.03(d), before it can be concluded that an applicant refuses to sign the application papers, firsthand evidence must be provided confirming that a copy of the complete application (including specification drawings and claims) has been sent to the last known address of the inventor. The present petition includes a statement from co-inventor Andreas SPERLICH providing firsthand evidence regarding Mr. SPERLICH's unsuccessful attempts to deliver the application documents to the non-signing inventor for signature. The statement also refers to the required mailing of a request for signature, accompanied by a copy of the complete application papers, to the last known address of the non-signing inventor (via DHL courier). However, it was apparently Ted C. GILLESPIE, not Mr. SPERLICH, who carried out this required mailing. Accordingly, a

statement from Mr. GILLESPIE is required to provide firsthand confirmation of this mailing and the inventor's failure to respond thereto; such statement should be accompanied by available documentary evidence, such as the DHL delivery confirmation. Until such additional materials are provided, item (4) is not considered satisfied.

Based on the above, applicants have failed to satisfy all the requirements for a grantable petition under 37 CFR 1.47(a).

CONCLUSION

Applicants' petition under 37 CFR 1.47(a) is **DISMISSED** without prejudice.

If reconsideration on the merits of the petition is desired, a proper response must be filed within **TWO (2) MONTHS** of the mail date of the present decision. Any request for reconsideration should include a cover letter entitled "Renewed Petition Under 37 CFR 1.47(a)" and must include the materials required to satisfy items (2) and (4) of a grantable petition, as discussed above. No additional petition fee is required.

Failure to file a proper response will result in abandonment of the application. Extensions of time are available under 37 CFR 1.136(a)

Please direct further correspondence with respect to this matter to Mail Stop PCT, Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.



Richard M. Ross
Attorney Advisor
Office of PCT Legal Administration
Telephone: (571) 272-3296
Facsimile: (571) 273-0459

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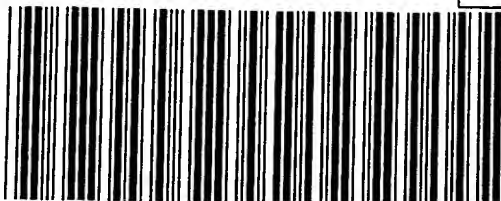
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St. Williams, Ontario

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Of Counsel

Allen W. Inks

June 5, 2006

VIA FEDERAL EXPRESS

Mr. Ian B. Bigham
303 West ¼ Line
RR#1
St. Williams, Ontario
NOE 1PO, Canada

Re: U.S. Patent Application Entitled
"Device for the Production of Comb Honey"
Our File 1-24194

Dear Mr. Bigham:


The enclosed documents are the papers related to the filing of a patent application for the above-identified invention. Included in the papers are the specification and the drawings. Also enclosed is the Declaration, in which you declare that you are the inventor, and in which you appoint our law firm to prosecute the patent application for you. I would like you to review the entire application, including the drawings, carefully for accuracy. If you find the application to be in good order, please sign and date the Declaration. There is no need for a witness or a notary. If you think that any revisions are necessary, please call me to discuss how best to effect them.

After you sign the Declaration, please send the Declaration to me at once by facsimile, (419) 255-9639. After sending the fax, please return the signed original Declaration to me by mail.

The deadline for submitting these papers is June 14, 2006. If you have any questions, please call me. Thank you for your time and effort in reviewing these materials.

Very truly yours,

MacMILLAN, SOBANSKI & TODD, LLC



Ted C. Gillespie

Enclosures



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